



California Fair Political Practices Commission

July 21, 1988

Eric T. Davis
3066 Yulupa Avenue
Santa Rosa, CA 95405

Re: Your Request for Advice
Our File No. A-88-226

Dear Mr. Davis:

We have received your request for advice under the conflict of interest code provisions of the Political Reform Act.^{1/} You are an attorney representing various joint powers insurance agencies and have been asked to assist each in the development of their conflict of interest codes. Some of the agencies are multi-county agencies who will be required to submit their codes to the Fair Political Practices Commission for approval.

Prior to your preparing and noticing the codes for these agencies, you have asked that we review your prepared samples of a notice of intention to adopt a code, a proposed code itself and a proposed resolution adopting a code.

QUESTION

Do the sample notice, code and resolution you have developed meet the Commission's requirements for adoption of codes by multi-county agencies?

CONCLUSION

The sample notice will comply with Commission requirements once you include a statement indicating where copies of the proposed code may be obtained and a statement providing the name and telephone number of the person to whom inquiries may be directed.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

The proposed code is acceptable. However, the persons designated in the code and the assigned disclosure categories will vary from agency to agency depending on the particular duties and responsibilities of the agency and its decision-makers.

The Political Reform Act does not require agencies to prepare and submit a written resolution adopting a code. Instead, a declaration by the chief executive officer is required as well as a summary of the hearing held.

ANALYSIS

Notice

Commission Regulation 18750.1 sets out the procedures multi-county agencies are to follow when adopting or amending a conflict of interest code. The regulation sets out such things as the specific language required to be contained in the written notice; provides that such written notice shall be given to those persons affected by the code at least 45 days prior to the public hearing or close of a written comment period; and that at the conclusion of the public hearing or comment period the agency shall submit the proposed code and various supporting documentation to the Commission for approval.

Specifically, the regulation requires that the written notice of intention shall:

- A) Describe the proposed code in general terms;
- B) State that copies of the proposed code are available to interested persons and indicate where copies may be obtained;
- C) Specify the location where written comments concerning the proposed code may be submitted;
- (D) Specify the date by which comments submitted in writing relating to the proposed code must be received in order for them to be considered by the agency;
- (E) State the time and place of any public hearing that is scheduled on the proposed code or if a public hearing is not scheduled, include a statement that any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing;
- (F) State the name and telephone number of any agency officer to whom inquiries concerning the proposed code may be directed; and

Eric T. Davis
July 21, 1988
Page 3

(G) State that the agency has prepared a written explanation of the reasons for the designations and the disclosure responsibilities, and has available all of the information upon which its proposal is based.

The sample notice you have prepared contains all of the above provisions except the requirements in subsection (B), that copies of the proposed code are available to interested persons and where copies may be obtained; and subsection (F), the name and telephone number of an agency officer to whom inquiries concerning the proposed code may be directed.

Once you have added these two provisions, your written notice will be in compliance with the regulation.

Proposed Code

As to the proposed code, we suggest some language changes to the disclosure category portion of the code. Those changes are shown on the attached amended sample code. Basically, the changes are to Category A to require the designated positions to disclose interests in individuals as well as in business entities which have filed claims against the agency. We also have clarified that the interest is reportable even if the claim is still pending during the reporting period.

You should realize that the sample you provided may not be sufficient for each and every agency you represent. The duties and responsibilities of persons within each agency vary as does the authority of the agency. For instance, some agencies rely heavily on insurance brokers to independently promote one insurance program over another to suit the insurance needs of the agency. This type of broker should be covered by the code, reporting interests in insurance companies, underwriters, etc. Other agencies designate the risk manager, claims administrator, chief financial officers, etc. With each agency, you need to identify the persons who can commit the agency, or recommend to the agency, a particular course of action, whether it be payment of claims, acquisition of materials, supplies or services, investment of funds or acquisition of real property.

The sample code you provided does not require the disclosure of real property. If an agency is empowered to invest in real property, you will need to add a real property disclosure category.

Resolution

The sample resolution you provided is more than adequate. The Commission does not require resolutions by the agencies to

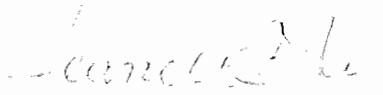
Eric T. Davis
July 21, 1988
Page 4

be submitted with conflict of interest codes. Instead, the chief executive officer of the agency must provide a declaration stating that the agency has complied with subsection (b) of Regulation 18750.1, which verifies the agency conducted a public hearing or written comment period on the proposed code. (The declaration must also state that the agency has designated all persons in decision-making positions.) In addition, one of the other pieces of supporting documentation required to be submitted is a summary of the hearing with identification of areas of controversy.

We appreciate your allowing us to review your proposed notice and code before you begin the painstaking process of adopting a code. Not many attorneys take the time and effort to educate themselves so thoroughly in the process before they begin. If I can answer any questions for you, please call me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Jeanette E. Turvill
Legal Assistant
Legal Division

DMG:JET:plh

Attachment

Jul 14 8 19 47 88

Eric T. Davis
3066 Yulupa Avenue
Santa Rosa, CA 95405
(707) 544-8013

June 11, 1988

Jeanette Turvill
Legal Assistant, Legal Division
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Re: Conflict of Interest Code; Joint Powers Insurance Agency

Dear Ms. Turvill:

I am a contract attorney working for Joseph A. Forest, a Healdsburg attorney representing a number of joint powers insurance agencies in California. I have been asked to assist in preparation of conflict of interest codes for these agencies. Some of these agencies cover more than one county and would have the FPPC review and approve their code. Others cover only one county and would have the county board of supervisors review and approve their code.

Enclosed you will find draft JPA resolutions noticing and adopting the model conflict of interest code contained in 2 California Administrative Code Section 18730, together with an Appendix A which contains the designated positions and interests to be disclosed under the code. The draft resolutions and Appendix A are based upon the models you mailed to me following my telephone conversation with you last April 15. These documents are intended to meet the FPPC's procedural requirements for adoption of codes by multi-county agencies, as provided in 2 California Administrative Code Section 18750.1.

I would appreciate your review of the draft resolutions and Appendix A, and your comments as to whether these documents as presently drafted satisfy FPPC requirements for joint powers insurance agency conflict of interest codes.

Thank you for your cooperation and assistance.

Sincerely,



Eric T. Davis

copy: Joe Forest

APPENDIX A

DESIGNATED POSITIONS

<u>Position</u>	<u>Category</u>
Members & Alternate Members of Board	All
Program Director	All
Legal Counsel	All
Consultants*	All

INTERESTS TO BE DISCLOSED

A person shall disclose all investments in, sources of income from, and his or her status as a director, officer, partner, trustee, employee or holder of a position of management in any business entity which fits the following disclosure category or categories for his or her designated position:

Category A

Any person or which a or has a claim pending ~~XX~~ business entity ~~which~~ has filed/claims/against the JPA ~~xxxxxxxxtobemembers~~

Category B

A business entity which is of the type to provide materials commodities, supplies, books, machinery, vehicles, equipment, or services (including but not limited to services of insurance companies, carriers, holding companies, underwriters, agents or accounting firms), of the type utilized by the JPA.

Category C

A business entity which is of the type in which the JPA is empowered to invest its funds.

*With respect to Consultants, the Board of Directors may make a finding and determination by minute order that a particular consultant, although a "designated position", is hired to perform a range of duties that are limited in scope and that, in addition, to fully comply with the disclosure requirements, such minute order shall include a description of the consultant's duties and, based upon that description, a statement of the extent of the disclosure requirements. Such minute order shall be a public record and shall be retained for public inspection.

5/9/88 DRAFT

RESOLUTION NO. 88-

RESOLUTION OF INTENT TO ADOPT CONFLICT OF INTEREST CODE
AND TO INVITE PUBLIC COMMENTS

WHEREAS, the Political Reform Act, Government Code Sections 81000 et. seq., requires every state and local government agency to adopt and periodically update a Conflict of Interest Code; and

WHEREAS, the Fair Political Practices Commission has adopted a regulation, 2 California Administrative Code Section 18730, which contains the terms of a model Conflict of Interest Code, which can be incorporated by reference, and which will be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. The Board of Directors of the [Insert name of Joint Powers Agency] (hereinafter "JPA") hereby declares its intention to adopt the terms of 2 California Administrative Code Section 18730 and amendments to it duly adopted by the Fair Political Practices Commission, along with the attached Appendix A in which officials, employees, and consultants are designated and disclosure categories are set forth, as the Conflict of Interest Code of the JPA.

Section 2. The Board of Directors accepts for filing the report of the Program Director, containing an explanation for the reasons for the designations and disclosure responsibilities in the proposed Code, attached hereto as Appendix B.

Section 3. Following adoption of such Code, the designated officials, employees, and consultants shall file statements of economic interest, and shall disqualify themselves from participation in decisions in which they may have a conflict of interest, in accordance with such Code.

Section 4. A written comment period is hereby established, commencing on [Insert beginning date of 45 day comment period] and terminating on [Insert ending date of comment period]. Any interested person may present written comments concerning the proposed code to the JPA no later than [Insert ending date of comment period], by delivering or mailing same to the Program

Director, at [Insert name, address, and telephone number of the JPA's contracting Program Director]. No public hearing will be held on this matter unless such a hearing is requested by an interested person, or his or her representative, no later than 15 days prior to the close of the written comment period.

Section 5. The Program Director is authorized and directed to file a copy of this resolution with the California Fair Political Practices Commission, and to personally deliver or mail copies of the resolution and 2 California Administrative Code Section 18730 to the officers, employees, and consultants designated in Appendix A, at least 10 days before the beginning of the written comment period. The Program Director is further authorized and directed to make copies of such documents available to interested parties.

I hereby certify that the foregoing resolution was duly and regularly passed by the Board of Directors of [Insert name of Joint Powers Agency] at a regular meeting held on _____, 1988.

AYES _____

NOES _____

ABSENT _____

Secretary of the Board

APPENDIX A

DESIGNATED POSITIONS

<u>Position</u>	<u>Category</u>
Members & Alternate Members of Board	All
Program Director	All
Legal Counsel	All
Consultants*	All

INTERESTS TO BE DISCLOSED

A person shall disclose all investments in, sources of income from, and his or her status as a director, officer, partner, trustee, employee or holder of a position of management in any business entity which fits the following disclosure category or categories for his or her designated position:

Category A

A business entity which has filed claims against the JPA or any of its members.

Category B

A business entity which is of the type to provide materials commodities, supplies, books, machinery, vehicles, equipment, or services (including but not limited to services of insurance companies, carriers, holding companies, underwriters, agents or accounting firms), of the type utilized by the JPA.

Category C

A business entity which is of the type in which the JPA is empowered to invest its funds.

*With respect to Consultants, the Board of Directors may make a finding and determination by minute order that a particular consultant, although a "designated position", is hired to perform a range of duties that are limited in scope and thus not required to fully comply with the disclosure requirements. Such minute order shall include a description of the consultant's duties and, based upon that description, a statement of the extent of the disclosure requirements. Such minute order shall be a public record and shall be retained for public inspection.

5/9/88 DRAFT

RESOLUTION NO. 88-

RESOLUTION ADOPTING CONFLICT OF INTEREST CODE

WHEREAS, the Political Reform Act, Government Code Sections 81000 et. seq., requires every state and local government agency to adopt and periodically update a Conflict of Interest Code; and

WHEREAS, the Fair Political Practices Commission has adopted a regulation, 2 California Administrative Code Section 18730, which contains the terms of a model Conflict of Interest Code, which can be incorporated by reference, and which will be amended by the Fair Political Practices Commission to conform to amendments to the Political Reform Act after public notice and hearings; and

WHEREAS, the [Insert name of Joint Powers Agency] previously adopted Resolution No. 88- noticing its intent to adopt a Conflict of Interest Code and inviting public comments during a 45 day written comment period;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. The Board of Directors of the [Insert name of Joint Powers Agency] (hereinafter "JPA" hereby adopts and incorporates herein by reference the terms of 2 California Administrative Code Section 18730, and any amendments which may be adopted thereto, as the Conflict of Interest Code of the JPA.

Section 2. The Board of Directors hereby adopts and incorporates herein by reference Appendix A hereto as the appropriate designation of officials, employees and consultants, and the appropriate disclosure categories, in the Conflict of Interest Code of the JPA.

Section 3. The Board of Directors hereby authorizes and directs the Program Director to file the required number of copies of this resolution with the code reviewing body for the JPA, together with all other documents as may be required by law, and to hereafter provide for the timely filing of all financial statements required by the Conflict of Interest Code.



California Fair Political Practices Commission

June 17, 1988

Eric T. Davis
3066 Yulupa Avenue
Santa Rosa, CA 95405

Re: 88-226

Dear Mr. Davis:

Your letter requesting advice under the Political Reform Act was received on June 14, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jeanette Turvill, in the Legal Division, directly at (916) 322-5901.

- We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, we will contact you shortly to advise you as to the information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:plh